

C-08010

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Full-size Transcript

Prepared by:

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**GOVERNMENT
EXHIBIT**

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17-CR-64 (DWF/KMM)

1 into a situation where it couldn't pay anything. Then we --
2 I think I revisited the settlement, and we settled for
3 80,000. Sorry, but it is kind of a funny story.

4 BY MR. WISNIEWSKI:

5 Q So Exhibit 48, is this -- was this accurate? Did
6 this reflect the amounts that were paid out -- that were
7 ultimately paid out to Apollo Diamond's vendors?

8 A I don't know that. I would imagine it's somewhat
9 accurate. Might have been less or more. I don't remember.

10 Q How about the amount paid to you, the \$208,000?
11 Did you receive \$208,000 ultimately from Apollo Diamond?

12 A No, I think I received more, but I actually took
13 on more responsibilities. So it kind of morphed.

14 Q Explain that to me. What additional
15 responsibilities?

16 A I basically agreed to be liable for debts we
17 didn't know what they were going forward. You know, this
18 all worked pretty well except that it occurred to Bob and
19 myself at the end of 2011 or so, Well, what about debts we
20 don't even know exist? You know, what about potential
21 lawsuits, which we hoped there weren't any. Unfortunately,
22 there were. Or what about, you know, vendors who --
23 remember, Bob wasn't running the company on a day-to-day
24 basis. He was the chairman and CEO, but he wasn't in the
25 nitty-gritty of sending out bills or paying them.

1 So it occurred to us that we needed to think
2 about, well, what happened about contingent liabilities?
3 Who is going to pay anything like that? Because under
4 Delaware law, the creditors of a company have the ability to
5 recover money against its shareholders if the shareholders
6 received money.

7 So we were concerned about the possibility of
8 creditors going after all the shareholders whose stock had
9 been purchased back at a penny. So rather than, you know --
10 which would have been a debacle, of course. I agreed to
11 sort of step in and deal with that situation.

12 MR. SHANK: You agreed to take on all the
13 contingent liabilities of the company?

14 THE WITNESS: Up to \$300,000. I am not nutsy
15 coo-coo.

16 MR. SHANK: Is that documented anywhere?

17 THE WITNESS: I think it is.

18 MR. SHANK: Now, the scenario you just described
19 that -- it would be limited to the amount they got back from
20 the company, right? Creditors wouldn't have unlimited
21 liability?

22 THE WITNESS: Right. Yes. You can't go after
23 people for more than a penny -- yeah. That would have been,
24 you know -- it would have opened up a messy situation.
25 Right.

1 MR. HAYES: So you received additional
2 compensation for taking on that additional liability?

3 THE WITNESS: When I say -- I was owed millions of
4 dollars personally because of money I loaned the company.
5 And forgive me, I don't know if you were here when this --
6 but money I loaned the company, salaries that I hadn't been
7 paid, and expenses that I had that hadn't been reimbursed.
8 So what I basically said is -- I mean, this is never going
9 to all get paid, right? There's no way. There is not
10 enough money. It's not going to happen.

11 So what I am going to do is I will take on -- my
12 father-in-law at this point is a 77-year-old guy, right. I
13 mean, he is not going to be, you know, dealing with all
14 this -- he is a brilliant guy, okay, but this isn't what --
15 you know, he doesn't deal with the day-to-day things like
16 this. Not that I do particularly either, but at least I am
17 younger.

18 So I said, Look, I will try to shepherd the thing
19 going forward through whatever issues; dissolving the
20 company, dealing with anybody that comes out of the woodwork
21 as a creditor, as a shareholder who's got a problem, and I
22 will basically absorb the liabilities up to this amount.
23 And can we reach a resolution? And we did.

24 MR. HAYES: And you got paid additional money for
25 helping wind up the company?